

25 June 2012

**CONSOL Energy Inc.**

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West Virginia Department of Environmental Protection  
Division of Water and Waste Management  
2012 303(d) List – Attn: Stephen A. Young  
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**CARRIE B. CRUMPTON**

*Manager – Regulatory Assistance & Training*

Reference: Comments – 2012 Draft 303(D) List for West Virginia

Dear Sir or Madam:

CONSOL Energy Inc. (CONSOL), a leading diversified energy company with operations located throughout West Virginia, would like to submit the following comments on the 2012 Draft 303(D) List for West Virginia. CONSOL Energy is a member of multiple industry trade organizations including the West Virginia Coal Association (WVCA). These comments are in line with and are submitted in support of the concerns outlined separately and submitted as comments by WVCA.

CONSOL Energy appreciates the opportunity to comment on this draft and respectfully submit the following comments:

**Biological Impairment Listings – Senate Bill 562 / WV SCI**

CONSOL applauds the agency for acknowledging the passage of Senate Bill 562 and the statement of legislative intent it contained relative to interpretation and application of the state's narrative water quality standards. Like the provisions of House Concurrent Resolution No.111 (disregarded by the agency in response to comments on previous 303(d) listing exercises) which was adopted by the Legislature in 2010, Senate Bill 562 expresses legislative intent with respect to the narrative water quality standard and makes it clear that singular reliance by the agency on the WV SCI is untenable.

Adherence with the provisions of this legislation will improve the effectiveness of the state's water quality program by assuring public and legislative involvement in the development of an assessment tool to measure attainment of the state's narrative water quality standard. Previous assessments of biological impairment / narrative standards attainment were based on the West Virginia Stream Condition Index (WV SCI) which was not part of the state's approved water quality standards program and has never been subject to the formal rulemaking process.

**Streams Re-Added to the 303 (d) List – Biological Impairment:**

While CONSOL fully supports the agency's decision not to add new streams to the list for biological impairment, we strongly object to the agency re-adding streams for biological

impairment that were previously removed from the impaired listing. It appears that certain streams once identified as biologically impaired that were subsequently delisted have now been re-added to the draft 303(d) using the WVSCI as the assessment of attainment for the narrative criteria.

The provisions of Senate Bill 562 should have controlled the agency's behavior with respect to these stream listing decisions- just because a stream had previously been listed as biologically-impaired does not make the WV SCI any more of a legitimate assessment tool in light of House Concurrent Resolution No. 111 or Senate Bill 562. Accordingly, any decision to re-add streams to the 303(d) list should be only made once the agency has completed the rulemaking process directed by Senate Bill 562.

Since at least some aspects of the draft 303(d) list still relay on the WV SCI, WVCA is providing copies of previous comments that detail the legal and technical flaws of the WV SCI and would ask the agency to consider the attached documents as comments on the current listing exercise.

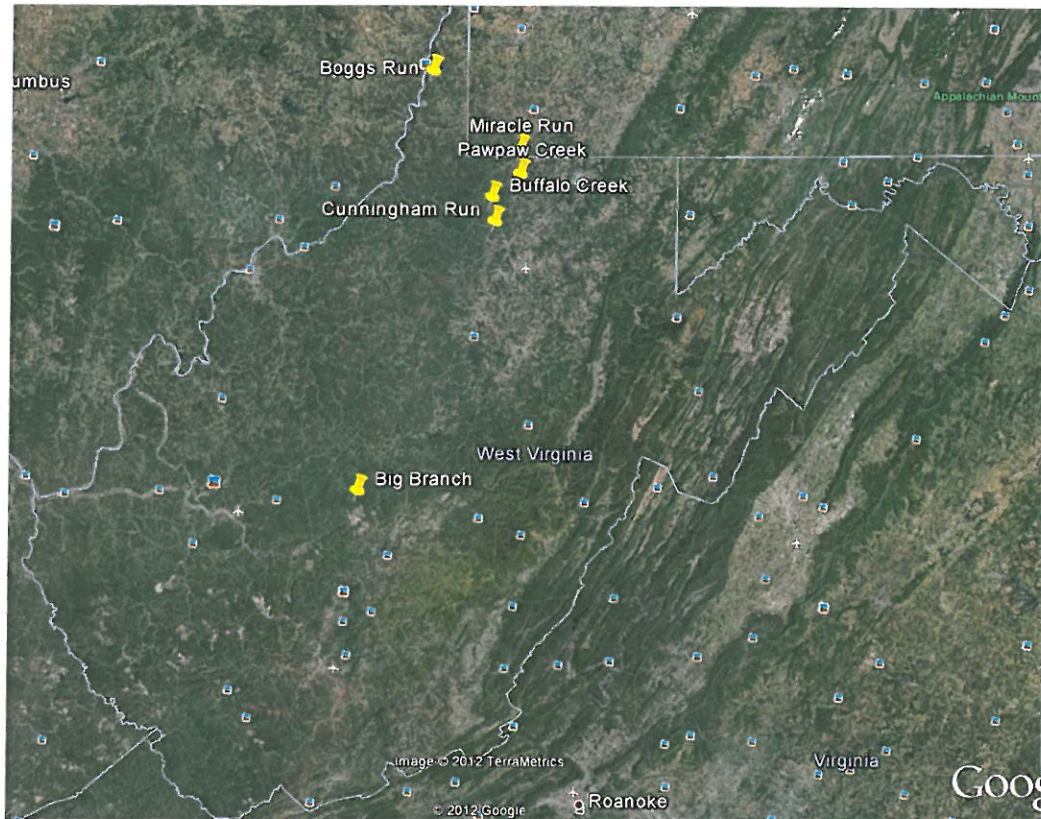
### **Data and Information**

CONSOL Energy requests to review the data that was utilized to determine the impairment status of the streams included on the 303(d) list. CONSOL has identified a number of streams that do not show impairment based on continuing data collection pursuant to Article 3 (Mining) & Article 11 (NPDES) permit sampling requirements.

CONSOL Energy recommends that additional work should be completed to validate the impairment status and Reach Description of the following streams included in the 2012 draft section 303(d) list:

<b>Watershed</b>	<b>Stream Name</b>	<b>Stream Code</b>	<b>Criteria Effected</b>	<b>Source</b>	<b>Reach Description</b>	<b>Projected TMDL Year</b>
Dunkard	Miracle Run	M-1-E	CNA-Biological	Mining	Entire Length	TBD
Monongahela	Paw Paw Creek	M-22	CNA-Biological	Unknown	Entire Length	2013
Monongahela	Buffalo Creek	M-23	CNA-Biological	Unknown	Entire Length	2013
West Fork	Cunningham Run	MW-7-D	CNA-Biological	Unknown	Entire Length	2014
Upper Ohio	Boggs Run	O-86	CNA-Biological	Mining	Entire Length	TBD
Elk	Big Branch	KE-50-B-3	CNA-Biological	Mining	Entire Length	TBD

Recent biological surveys of these streams conducted by CONSOL Energy exhibited WVSCI scores exceeding the minimum 68 required to obtain an unimpaired condition. An overview map of the sampling locations is included below.



Miracle Run Detail:

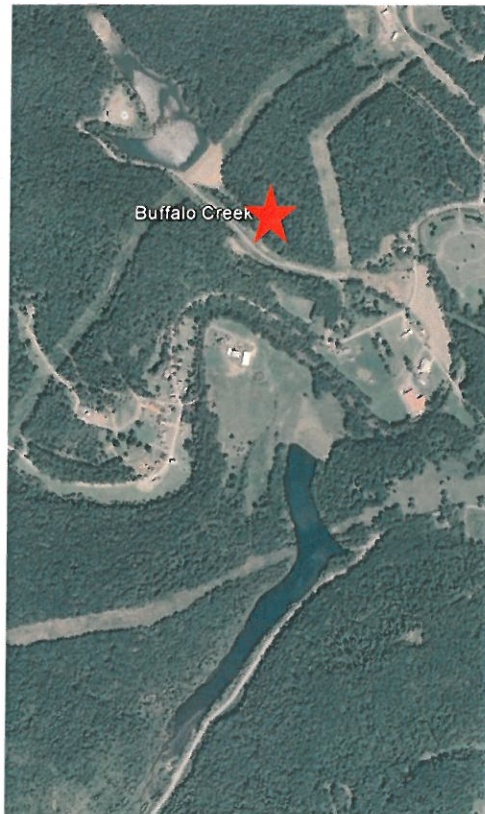




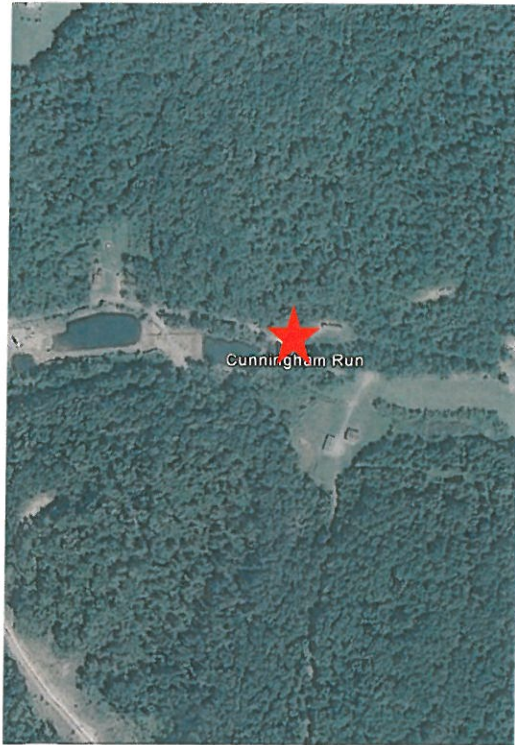
Paw Paw Creek Detail:



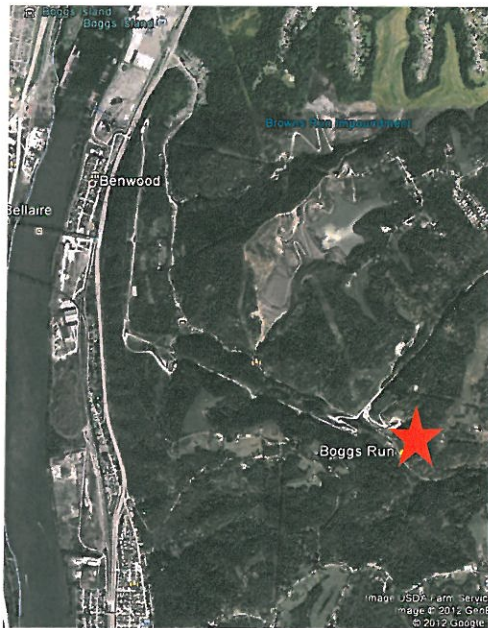
Buffalo Creek Detail:



Cunningham Run Detail:



Boggs Run Detail:



Big Branch Detail:



We appreciate the Department's consideration of these comments and appreciate the opportunity to work with the Department to develop this guidance. If you have any questions, please do not hesitate to contact me.

Regards,

A handwritten signature in blue ink, appearing to read 'Crumpton'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Carrie B. Crumpton  
Manager – Regulatory Assistance & Training  
CONSOL Energy Inc.